

**REMARKS**

**TERMINAL DISCLAIMER**

The Office Action suggests that the Terminal Disclaimer has not been received. A terminal disclaimer is enclosed herewith to obviate the obviousness type double patenting rejection, based upon U.S. Patent No. 6,541,554 to Morin. Thus, this rejection has been rendered moot.

**THE REJECTION UNDER  
SECTION 102 to MORIN**

The Office Action continues to reject claims 4-12 over commonly assigned granted patent U.S. 6,541,554 to Morin et al. (hereafter "Morin"). This rejection is traversed, as set forth below.

For anticipation to apply, a reference must set forth each and every limitation of a claimed invention. In this instance, Applicant previously pointed out that under Section 103(c), the Morin commonly owned patent cannot be used against the instant application. Thus, anticipation is the only route for rejection using Morin as the rejecting reference. Further, unless Morin discloses EACH AND EVERY element of the claimed invention, either literally or inherently, then there can be no such anticipation, or rejection.

Morin does not literally or inherently disclose the elements of the claimed invention. Claim 4 provides one particular embodiment of the invention. In that particular embodiment, a TUFTED CARPET is claimed. A description of the tufted structure of the invention is provided at page 18, last paragraph, and page 23.

The tufted carpet of the invention comprises at least TWO LAYERS: pile layer and a backing layer. The pile layer usually (but not always) comprises fibers extending in a direction that is roughly opposite said at least one backing layer. Furthermore, the backing layer comprises a plurality of polypropylene tape fibers. The elements of the invention are not disclosed in Morin. Morin does not disclose a TUFTED CARPET. Morin also does not specifically disclose a two-layered structure that employs a pile layer and a backing layer. Thus, it is requested that the rejection of this application as based upon Morin be withdrawn.

THE REJECTION UNDER  
SECTION 102/103 TO INOUE

The Office Action rejected the claims 4-12 under section 102/103 based upon Japanese 2001-081628 to Inoue (hereafter the "Inoue reference"). This rejection is traversed. Inoue discloses a needle-punched carpet made from a polypropylene and polyethylene combination. It discusses the problem, which is characteristic of needle punched products, of the color of the base fabric "showing" through the fibers of the needle punched layer. Some needle punch manufacturers call this undesirable phenomenon "grin-through", and it is a disadvantage and problem in the manufacture of needle punched materials.

Inoue does not disclose a two layered tufted carpet, as in the invention. All of the claims in this application are directed to TUFTED carpet. Tufted carpet is a different physical structure from needle punched material, and it is made by a different method, and results in a different article (different structure). None of the claims of the present invention are directed to needle punched carpet. Inoue does not disclose a

two layered TUFTED structure of an arrangement specifically directed to a pile layer

and a backing layer, in which fibers are TUFTED through the fabric substrate.

Furthermore, there is no motivation evident in the art to modify the Inoue teachings to use a tufted structure instead of its preferred needle punched structure. Needle punched and tufted carpet are made by different methods, and in general are of a different construction. Thus, it is requested that the rejection be withdrawn.

#### THE REJECTION UNDER SECTION 102/103

In the Office Action, a rejection based upon a combination of United States Patent Number 4,560,734 to Fujishita (the "Fujishita patent"), in view of U.S. Patent Number 5,798,167 to Conner et al. (the "Conner patent"). This rejection is traversed.

Fujishita teaches polypropylene fibers having improved heat shrinkability and tenacity. However, Fujishita does not disclose a product having the desirable heat shrinkability that is observed in the practice of this invention. In claims 4-9 and 13 of the invention, a heat shrinkage is specifically recited as: "polypropylene tape fibers exhibit a shrinkage rate after exposure to 150°C hot air of less than about 2%." No such shrinkage of less than about 2 % was achieved in the practice of Fujishita, as Fujishita recites in Table 1 a shrinkage at 150 degrees C of Example 1 of only about 3.3. The invention surpasses the results reported in Fujishita by a wide margin (at least  $2/3.3 \times 100 =$  about 60 percent improvement), and there is no teaching in Fujishita that would suggest any ability therein to achieve a shrinkage of less than about 2 %. This provides unexpected results in light of Fujishita, and thus supports patentability.

Furthermore, the U.S. Patent No. 5,798,167 to Connor (the "Connor patent")

does not supply the missing limitations, and it does not describe the invention as

claimed. Connor does not relate at all to low shrink fibers for use in tufted carpeting, and thus is not applicable to the invention. There is no teaching in Connor, that, when combined with Fujishita, can result in the invention as claimed.

As to claims 10-13, these claims each require as one limitation an x-ray scattering pattern such that the center of the scattering peak is at about 0.4 degrees or lower. No x-ray scattering pattern is disclosed at all in Fujishita, and thus, there is no anticipation of the claims. Furthermore, there is no such disclosure of any kind in Connor.

With regard to claim 14, the Fujishita reference does not teach or recommend the use of a DBS derivative in this context. No such teachings are evident in Fujishita. In fact, Fujishita teaches away from using dibenzylidene (DBS) derivatives, as it specifically indicates that employment of such derivatives will NOT IMPROVE HEAT SHRINKABILITY ABOVE 130 DEGREES C. That is directly contrary to the surprisingly and beneficial discoveries of the invention. See column 2, lines 25-30. This specific teaching away from the invention counsels in favor of patentability of the invention in light of Fujishita, or combinations of Fujishita with other references.

Applicants have identified several species of nucleating agent that could be employed, including specifically DBS derivatives, in a concentration of at least about 3 ppm, to achieve unexpected results as compared to that of Fujishita or Connor.

It is believed that the above claims patentably define over the prior art record and that the application is in complete condition for allowance. Should any issues remain

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after consideration of this Amendment, however, the Examiner is invited and encouraged to telephone the undersigned at his convenience.

**Information Disclosure Statement:** An additional Information Disclosure Statement is submitted with this Amendment. It is requested that the Examiner review each reference, and provide his handwritten notation for the record to show that each reference was fully considered.

**Fee Authorization:** In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from our Deposit Account No. 04-0500.

**Extension of Time:** In the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicant hereby petitions for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from our Deposit Account No. 04-0500.

Respectfully submitted,



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